

BRYAN CAVE LLP

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Attorneys for Plaintiff
AIRWAIR INTERNATIONAL LTD.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

AIRWAIR INTERNATIONAL LTD., a
company of the United Kingdom,

Plaintiff,

vs.

NEXT PLC, a company of the United Kingdom;
NEXT RETAIL LTD., a company of the United
Kingdom; and DOES 1-50,

Defendants.

Case No. 3:16-cv-00944

Honorable Susan Illston

**CONSENT JUDGMENT AND
PERMANENT INJUNCTION**

Action Filed: February 25, 2016
Judge: Honorable Susan Illston

BRYAN CAVE LLP
560 MISSION STREET, SUITE 2500
SAN FRANCISCO, CALIFORNIA 94105

1 The parties hereto having agreed to a settlement of the claims between them, and having
 2 stipulated to entry of this consent judgment, it is hereby ORDERED, ADJUDGED AND
 3 DECREED:

4 1. This Court has jurisdiction over Defendants Next PLC and Next Retail Ltd.
 5 (collectively, “NEXT”) for the purpose of this Consent Judgment only and over the subject matter
 6 at issue in this action. NEXT consents to jurisdiction of this Court, and this Court retains
 7 jurisdiction for the purpose of executing and enforcing this Consent Judgment and Permanent
 8 Injunction.

9 2. Plaintiff AirWair International Ltd. (“AirWair”) is the owner of the Dr. Martens®
 10 trade dress for footwear and is the owner of several U.S. registrations for its trade dress in the
 11 United States Patent and Trademark Office, including “the combination of yellow stitching in the
 12 welt area and a two-tone grooved sole edge” (Reg. No. 2,437,751, attached as Exhibit 1); the
 13 yellow “welt stitch located around the perimeter of footwear” (Reg. No. 2,437,750, attached as
 14 Exhibit 2); its DMS undersole design mark (Reg. No. 2,102,468, attached as Exhibit 3, the “DMS
 15 Design Mark”); “the design of an [*sic*] sole edge including longitudinal ribbing, and a dark color
 16 band over a light color” (Reg. No. 2,104,349, attached as Exhibit 4); and “longitudinal ribbing and
 17 a dark color band over a light color on the outer sole edge, welt stitching, and a tab at the top back
 18 heel of footwear” (Reg. No. 2,341,976, attached as Exhibit 5) (the above registrations collectively,
 19 “AirWair Trade Dress Marks”). AirWair has the exclusive right to use the AirWair Trade Dress
 20 Marks in commerce, on or in connection with footwear, and enforces its rights throughout the
 21 world.

22 3. NEXT acknowledges the validity of the trade dress registrations attached as
 23 Exhibits 1–5.

24 4. NEXT has imported, distributed, offered for sale, and sold footwear under the style
 25 names “Lace Up Boot (Older Girls),” “Lace Up Boot (Younger Girls),” and “Black Super Heavy
 26 Lace-Ups” that features the AirWair Trade Dress Marks (“NEXT Accused Footwear”).
 27 Representative samples of the NEXT Accused Footwear are shown in Exhibit 6.
 28

1 5. NEXT represents and warrants that it sold approximately 115 pairs of the NEXT
2 Infringing Footwear in the United States, with sales revenue totaling approximately £2152. NEXT
3 further represents that it has no pairs of the NEXT Infringing Footwear remaining in inventory.

4 6. NEXT represents and warrants that as of the date of this Agreement, it has
5 discontinued manufacturing, licensing, distributing, advertising, marketing, purchasing or selling
6 the NEXT Accused Footwear in the United States and worldwide. NEXT further represents and
7 warrants that it is not currently manufacturing, distributing, selling or offering for sale any
8 footwear or any component part thereof that includes any of the features that are the subject of any
9 of the AirWair Trade Dress Marks.


10 7. NEXT further represents that there is no remaining inventory of any point-of-sale
11 materials, labels, signs, boxes, prints, catalogs, line sheets, marketing materials, internet web
12 pages, metatags, packages, papers, other trade dress, and advertisements in the possession of
13 NEXT bearing images, illustrations, or representations of the enjoined shoes and boots, trade dress
14 and undersole patterns, nor does it have any plates, molds, matrixes, and other means of making
15 the same in its possession or control.

16 8. NEXT, and each of its officers, directors, servants, employees, subsidiaries, and
17 successors who receive actual notice of this order by personal service or otherwise, are
18 permanently enjoined from manufacturing, importing, exporting, distributing, licensing, selling,
19 marketing, advertising, promoting or offering for sale the NEXT Accused Footwear or any
20 footwear that includes any of the features that are the subject of any of the AIRWAIR Trade Dress
21 Marks or any component part thereof that includes any of the features that are the subject of any of
22 the Airwair Trade Dress Marks. NEXT also agrees not to authorize, enable or procure any other
23 person to do such acts.

24 9. It is hereby ordered that this action be closed.
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1 **IT IS SO ORDERED.**

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3
4 Dated: 10/12/16


By: 
The Honorable Susan Illston
Judge of the U.S. District Court

5
6
7
8 Dated: October 5, 2016

BRYAN CAVE LLP

9
10 By: /s/ Alexandra Whitworth
Alexandra C. Whitworth
Attorneys for Plaintiff
AIRWAIR INTERNATIONAL LTD.

11
12 Dated: October 5, 2016

13
14 By: 
Defendant NEXT PLC.

15
16
17 Dated: October 5, 2016

18 By: 
Defendant NEXT RETAIL LTD.

19
20 **Attestation:** I, Alexandra C. Whitworth, hereby attest that concurrence in the filing of this
21 document has been obtained from each of the other signatories.
22

23 /s/ Alexandra Whitworth
24 Alexandra C. Whitworth
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26
27
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Defendants.

CASE NO. 3:16-CV-00944-SI

CERTIFICATE OF SERVICE

Date Action Filed: February 25, 2016

BRYAN CAVE LLP
560 MISSION STREET, SUITE 2500
SAN FRANCISCO, CALIFORNIA 94105

CERTIFICATE OF SERVICE

I am employed in the aforesaid County, State of California; I am over the age of eighteen years and not a party to the within entitled action; my business address is: 560 Mission Street, 25th Floor, San Francisco, California 94105.

On October 11, 2016, I caused to be served on the interested parties in said action the within:

- CONSENT JUDGMENT AND PERMANENT INJUNCTION**

on the interested parties in this action by placing a true copy thereof, enclosed in a sealed envelope, addressed as follows:

Adam M Cohen, Esq.
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Next Plc and Next Retail Ltd.

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[X] BY FEDERAL EXPRESS: I placed such envelope for deposit in the Federal Express drop slot for service by Federal Express. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with Federal Express on that same day at San Francisco, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if service is more than one day after date of deposit for express service in affidavit.

I declare that I am employed within the office of a member of the bar of this Court at whose direction the service was made. Executed on **October 11, 2016**, at San Francisco, California.

/s/ Angela Franklin
 Angela Franklin